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22 **UNITED STATES DISTRICT COURT**
23 **SOUTHERN DISTRICT OF CALIFORNIA**

24 KFX MEDICAL CORP.

25 Plaintiff and Counterdefendant,

26 vs.

27 ARTHREX, INC.

28 Defendant and Counterclaimant.

Case No. 3:11-cv-1698

Hon. Dana M. Sabraw

**DECLARATION OF ROBERT W.
DICKERSON, JR. IN SUPPORT OF
DEFENDANT ARTHREX, INC.'S
BENCH BRIEF REGARDING
EXCLUSION OF LATE EVIDENCE
(S&N LICENSE AGREEMENT)**

1 I, Robert W. Dickerson, Jr., declare and state as follows:

2 I am a partner in the law firm of Dickstein Shapiro LLP, and I am counsel of
3 record for Arthrex, Inc. (“Arthrex”) in this action. I submit this declaration in support
4 of Defendant Arthrex, Inc.’s Bench Brief Regarding Exclusion Of Late Evidence
5 (S&N License Agreement). The following statements are based on my personal
6 knowledge.

7 1. Attached hereto as Exhibit 1 is a true and correct copy of the license
8 agreement between KFx and Smith & Nephew, dated August 12, 2013, (PX 0936)
9 FILED UNDER SEAL.

10 2. Attached hereto as Exhibit 2 is a true and correct copy of a Tate Scott
11 memo to the KFx board, dated January 19, 2010, FILED UNDER SEAL.

12 3. Attached hereto as Exhibit 3 is a true and correct copy of an Evaluation
13 and Nondisclosure Agreement between Smith & Nephew and KFx, dated March 4,
14 2005, FILED UNDER SEAL.

15 4. Attached hereto as Exhibit 4 is a true and correct copy of a Stephen
16 Snowdy email to Tate Scott and Craig Taylor, dated April 15, 2010, FILED UNDER
17 SEAL.

18 5. Attached hereto as Exhibit 5 is a true and correct copy of a Tate Scott
19 email to Don Haut, dated April 15, 2010, FILED UNDER SEAL.

20 6. Attached hereto as Exhibit 6 is a true and correct copy of excerpts of a
21 presentation, dated December 10, 2010, (DX 5776) FILED UNDER SEAL.

22 7. Attached hereto as Exhibit 7 is a true and correct copy of excerpts of the
23 deposition transcript of William Tate Scott, III, dated November 16, 2012, FILED
24 UNDER SEAL.

25 8. Attached hereto as Exhibit 8 is a true and correct copy of Licensing
26 Transaction (DX 5485), FILED UNDER SEAL.

1 9. Attached hereto as Exhibit 9 is a true and correct copy of excerpts of the
2 deposition transcript of George G. Strong, Jr, dated July 24, 2013, FILED UNDER
3 SEAL.

4 10. Attached hereto as Exhibit 10 is a true and correct copy of excerpts of
5 Arthrex's First Set of Document Requests, dated December 29, 2011.

6 11. Attached hereto as Exhibit 11 is a true and correct copy of a Joe Jennings
7 email to Salvatore Tamburo, dated August 14, 2013.

8 12. Attached hereto as Exhibit 12 is a true and correct copy of excerpts of the
9 expert damages report of George G. Stong, Jr., dated, March 7, 2013, FILED UNDER
10 SEAL.

11 13. Attached hereto as Exhibit 13 is a true and correct copy of excerpts of the
12 expert damages report of Brett Reed, dated April 18, 2013, FILED UNDER SEAL.

13 14. Attached hereto as Exhibit 14 is a true and correct copy of a Knobbe
14 Martens Olson & Bear LLP "Successes" page from their website, highlighting
15 representation of Smith & Nephew, Inc.

16 15. Attached hereto as Exhibit 15 is a true and correct copy of a Knobbe
17 Martens Olson & Bear LLP press release, titled *Federal Circuit Court of Appeals*
18 *Rules in Favor of Knobbe Martens Client, Smith & Nephew, Inc.*, dated July 16, 2013.

19 16. Attached hereto as Exhibit 16 is a true and correct copy of a Knobbe
20 Martens Olson & Bear LLP press release, titled *Knobbe Martens Scores Major Patent*
21 *Litigation Victory For Smith & Nephew*, dated October 20, 2010.

22 17. Attached hereto as Exhibit 17 is a true and correct copy of a Knobbe
23 Martens Olson & Bear LLP press release, titled *Smith & Nephew Case Transferred*
24 *Out Of Eastern District Of Texas*, dated January 15, 2008.

1
2 Dated: August 15, 2013

By: /s/ Robert W. Dickerson, Jr.

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